UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: Chapter 13 Case

Paul J. Krahn and Marsha M. Krahn, BKY Case No. 3-89-807

Debtors. MEMORANDUM ORDER

At St. Paul, Minnesota.

This matter is before the Court on application of Fredrikson & Byron, former attorneys for the Debtors, for allowance of compensation and expenses. Objections were filed by the Debtors. The matter was heard on June 11, 1990 and taken under advisement.(FN1)
Appearances are noted in the record. The Court, having considered arguments of counsel, having before it all relevant and necessary information, and being fully advised in the matter, now makes this Order pursuant to the Federal and Local Rules of Bankruptcy Procedure.

(1) A substantial portion of the compensation request in dispute is for services rendered in connection with a dispute between the Debtors and the IRS. That dispute has been recently resolved, with other counsel representing the Debtors. Applicant has submitted work product involving the IRS dispute in support of its application. Consequently, resolution of the allowance dispute was deferred to avoid prejudice to any party to the IRS dispute by earlier review of the work product.

The final application is the Second Amended Application for compensation and expenses, filed on June 8, 1990, amending a prior application filed on March 29, 1990, as subsequently amended by a June 6, 1990 first Amended Application. The Second Amended Application seeks a total award of compensation in the amount of $7687.50.(FN2) That amount includes $1070.00 for preparing and defending applications.(FN3) The balance is for services rendered in two matters. One was a dispute between the Debtors and the IRS over the nature and allowed amount of its claim in the Chapter 13 case. The other was a real estate transaction of Paul Krahn, involving his final payment of a contract for deed and acquisition of title to property in Ramsey County.

Preparation and Defense of Fee Applications

Preparation and defense of fee applications are not services rendered for or on behalf of debtors by their counsel in Chapter 13 bankruptcy cases. Ordinarily, these costs are overhead. See: In re: First Guaranty Venture Corporation, 1988 W.L. 102819 (Bankr. D.Minn. Judge Dreher 5/12/88). There is nothing unique about this case that would justify assessing the cost against the Debtors. In fact, assessing the cost against them would exacerbate an already bad situation. The fees sought are otherwise unreasonably high.
IRS Dispute

Fees sought in connection with the IRS dispute total $3359.00. Reasonable fees for reasonable services should be about one-third that amount. Applicant's senior partner in charge of the matter billed his services at $210.00 an hour. The invoice supporting the March 29, 1990, Application has the following entry: "10/10/89 W. Kampf Telephone conference with client; draft objection to IRS claim. .8 156.00".

In fact, applicant's work product reveals that Mr. Kampf drafted a short memo to a paralegal assistant directing her to prepare the objection. The memo is concise, and evidences a clear understanding by Mr. Kampf of both the nature and extent of his

(FN2) The June 8 document, apparently erroneously, states the total as $6776.00. That figure is the amount claimed on the June 6, 1990, Amended Application. When the additional compensation amount sought by the June 8 Application is added, the total becomes $7687.50. When requested reimbursement of expenses in the amount of 333.67 are added, the grand total is $8021.17, which is the stated total amount requested.

(FN3) The invoice submitted in support of the March 29 Application logs two hours paralegal time at $70.00 an hour for billing statements prepared in connection with a prior billing period for which compensation and expenses have already been allowed. Applicant added another $140.00 for preparation of the application that is supported by the invoice. See: Application For Postconfirmation Reimbursement Or Compensation, March 29, 1990. An Amended Application of June 6, 1990, adds $420.00 for attendance at the May 16, 1990, hearing on allowance of the Application. The final application of June 8 includes an additional $370.00 listed on the supporting invoice, consisting of $160.00 for preparation and another $210.00 for appearance at the May 16 hearing to defend the disputed application. See: Amended Application For Postconfirmation Reimbursement Or Compensation, June 6, 1990, and, Second Amended Application For Postconfirmation Reimbursement Or Compensation, June, 8, 1990.

desired objection.(FN4) In little more than the time spent on the memo, Mr. Kampf could have dictated the objection himself.(FN5) Yet, it took an additional 7.5 hours and $525.00 of paralegal services to produce the unremarkable document.(FN6)

A junior associate was thereafter assigned to work on the file regarding the IRS dispute. The only significant issue in the matter was whether 11 USC Section 506(d) could be used to avoid a tax lien on a debtor's exempt homestead. The issue was not complicated. Two bankruptcy judges in this district, including the

judge who presided over this dispute, had already determined that liens on exempt property were subject to avoidance under Section 506(d). See: In re Gibbs, 44 B.R. 475,479 (Bankr. D.Minn. 1984). In re Haugland, 83 B.R. 648, 651 (Bankr. D.Minn. 1988). The only question was whether a tax lien was somehow an exception to the rule. While the question was, perhaps, an interesting one, it was not particularly complicated. See: In re: Paul J. Krahn and Marsha M. Krahn, Bky Case No. 3-89-807, (Judge O'Brien 10/20/90).

The associate logged 12.4 hours, at $100.00 an hour, reviewing, studying, conferring, and attending the first hearing on the matter, which was held on December 15, 1989.(FN7) The matter was thereupon continued for evidentiary hearing to be held on March 2, 1990, on the value of the real estate.(FN0) In the meantime, the associate accrued another $1015.00 in attorney's fees reviewing, studying, conferring, and proposing settlement.(FN8)

For reasons unknown to the Court, considerable energies were apparently expended by both sides in avoiding a hearing on March 2, 1990.(FN9) On February 28 and on March 1, 1990, a total of $601 in attorney's fees were accrued by Applicant's associate in conferences with counsel for IRS and with the Court's law clerk. Avoiding the hearing seems to have been as much a part of the discussion as potential settlement. The Court's law clerk informed

(FN4) The memo in its entirety reads: "We need to do an objection to the IRS claim. If you'll pull out the claim you'll see that there are parts of it from years that are more than four years old; those parts should be objected to as non-priority and therefore are unsecured without priority. As to the secured claim, we object on the grounds that there are prior existing liens equal to the value of debtors' only asset, the homestead, and it should therefore be deemed to be an unsecured claim and their lien on her homestead should be expunged."

(FN5) Indeed, the entire Notice Of Hearing And Objection To Claim No. 8, that was ultimately prepared was boiler plate material except for this language in paragraph 4:

"1. The secured claim for the tax periods December 31, 1981 and December 31, 1984 were more than four (4) years old at the time of the filing of the petition herein and should be treated as an unsecured claim without priority.

2. There are prior existing liens equal to the value of Debtor Marcia [sic] M. Krahn's only asset, her homestead, and the remaining portion of the secured claim should be deemed to be an unsecured claim and the lien on her homestead should be expunged."

(FN6) See: footnote 5, supra. From the invoice supporting the application, it appears that the paralegal performed secretarial services in connection with her work on this assignment as well. For instance, the invoice contains the following entry: " 10/30/89 L. Mueller Continue draft of objection to IRS claim; draft proposed order; attention to service of the same; forward verification to client for execution. 2.5 175.00". Secretarial costs are overhead expenses, not fees chargeable to Chapter 13 debtors.

(FN7) No brief was ever filed on behalf of the Debtors by the Applicant concerning the dispute. This time spent is difficult to reconcile with the facts of the matter. The senior lawyer in charge of the Debtors' bankruptcy case knew precisely what the

issues were, and, as a $210.00 an hour expert in the field, presumably knew what the arguments were, at the time he directed the memo to his paralegal regarding the claim objection on October 10, 1989. As of December 15, 1989, the associate had logged $1240.00 in attorney's fees without making any discernable contribution to the ultimate resolution of the claim objection.

(FN8) Actually, value never did become a serious issue. The attorney for the IRS ultimately conceded the question.
(FN9) Of that amount, $322.00 involved more legal research and a two-page settlement proposal letter to IRS counsel.
(FN10) That impression is drawn from work product of Applicant, consisting of notes based on conferences just prior to the scheduled hearing.

the lawyers that the Court wished to have the dispute resolved. In fact, they were informed that should they not settle the matter, the Court expected appearances, evidence and oral argument so that the Court could rule from the bench at the hearing. No settlement was reached, but the hearing was once again continued for 60 days at the urging of counsel.(FN11)

Not long thereafter, the March 29, 1990 application for fees was filed. Paul Krahn appeared pro se at the continued hearing on the claim objection, held on May 3, 1990.(FN12) Hearing on the merits of the fee application was held June 11, 1990.

Based on the facts of the matter, and on the law, the entire claim objection proceeding could easily have been resolved for no more than $1200.00 in attorney's fees; and it clearly should have been resolved by settlement or at hearing, on or before December 15, 1990.(FN13)

The Real Estate Matter.

In October of 1987, Paul Krahn acquired the vendee's interest in a contract for deed to certain real property in Ramsey County. The property was partially abstract and partially torrens. Legal services rendered, for which compensation is presently sought by Applicant, involved representation of Mr. Krahn in connection with his final payment and receipt of marketable title to the property.

Actual work performed included: certain negotiations with the attorney for the contract vendor; examination of title and preparation of title opinion; attending the closing; and, certain post-closing work made necessary by the form of the deed presented at closing, and by the subsequent bankruptcy filing of the vendor before the proper real estate documents of transfer could be filed. Three attorneys and two paralegals were involved in the work at various stages. Total fees sought for the services is $3058.50. The fees are excessive.

While examination of the title revealed a number of problems and caused some concerns, they were not unusual or unique to the ordinary course of this kind of real estate work. Similarly, while

(FN11) I personally don't know why I consented to that. It was

a mistake. Another $1015.00 in attorney's fees had accrued, with the Debtors no closer to resolution of their claim objection than if Mr. Kampf had filed the objection and taken a sabbatical without assigning the file. The fact is that nothing had been accomplished regarding the Debtors' position in this dispute as of March 2, 1990, except the accrual of approximately $2,100.00 in attorney's fees against them.

(FN12) The Krahns subsequently obtained other counsel, who filed a brief and argued the merits of the objection at hearing on September 6, 1990. The arguments were no different than those known to Mr. Kampf at the time he directed the paralegal to prepare the objection; and, they were presented in no more sophisticated manner than was Mr. Kampf capable of presenting them at first hearing on December 15, 1989, should he have chosen to appear and handle the matter. The Court ruled in favor of the Krahns by order dated October 22, 1990, and entered on October 23.

(FN13) Applicant's associate is known to the Court as a good and conscientious young lawyer. The fault, if there is one here, lies in the management of the file regarding this objection to claim dispute. Neither the paralegal nor associate should have been assigned, because they simply could not provide the necessary and appropriate services as efficiently, economically, and therefore effectively, as could the senior lawyer in charge. The economic waste that resulted from management of the controversy should not be suffered by the Debtors.

the transaction developed a number of wrinkles along the way to completion, they were not extraordinary. A single real estate lawyer, at a competency level of $150.00 an hour, could easily be expected to accomplish what was done here in no more than 10 hours.

Interestingly, of the total amount sought by Applicant for this work, approximately $1,500.00 is for conferencing among Applicant's professionals, and for "attention to issues regarding contract for deed". While that might have been necessary because of the number of people involved in the project, the resulting cost vastly exceeds the reasonable value of reasonable, necessary and prudent services required in the matter.(FN14)

The reasonable value of reasonable, necessary and prudent services rendered by Applicant in connection with the real estate transaction for which compensation is sought, does not exceed $1500.00.

Total Fees and Expenses Allowed

Consistent with this opinion, Applicant is entitled to an award of $1,200.00 for services rendered in connection with the IRS dispute, and $1,500.00 for services rendered in connection with the real estate transaction. Additionally, Applicant seeks reimbursement of costs incurred in the amount of $333.67. Total

(FN14) Once again, the fault, if there is one, lies in the management of this file. The Court has no reason to believe that the work shown was not done, or that the time listed was padded. However, it is evident that this is another instance where the team approach was inappropriately used, given the nature and complexity of the matter. The situation is exacerbated when each professional

on the team bills his or her full rate for every breath drawn in connection with the project, even when drawn in interaction with the others. The cost simply bears no reasonable relationship to the value of the work product taken as a whole.

fees and costs allowable pursuant to application of March 29, 1990, supplemented by application of June 8, 1990, is $3033.67.

BASED ON THE FORGOING, IT IS HEREBY ORDERED:

Fredrikson & Byron is allowed the sum of $3033.67 as and for fees and costs pursuant to its application of March 29, 1990, supplemented by application of June 8, 1990.

Dated: November 7, 1990

BY THE COURT:

DENNIS D. O'BRIEN
U.S. BANKRUPTCY JUDGE